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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,097	12/01/2003	J. Michael Corrigan	00259P0005US	1762

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WOOD, PHILLIPS, KATZ, CLARK & MORTIMER
500 W. MADISON STREET
SUITE 3800
CHICAGO, IL 60661

EXAMINER

ALEXANDER, REGINALD

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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09/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/725,097

Applicant(s)

CORRIGAN ET AL.

Examiner

Reginald L. Alexander

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

This application contains claims 14-17 drawn to an invention nonelected without traverse in the paper dated 19 July 2006.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 9 and 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinberger et al. in view of Denvir et al.

There is disclosed in Kleinberger a humidification system for a refrigerated product holding case 12, including a holding space 15, the system comprising: a plurality of air atomizing nozzles 40 positioned proximate the holding space and including a water inlet 32, 59 and air inlet 124a; and a water supply 27 and a control 35 selectively supplying pressurized water (by way of a pump 89) from the supply to the atomizing nozzle water inlet, the control including a timer 96 for intermittently supplying pressurized water.

Denvir teaches that it is known in the art to use ozone to sterilize contained food products. There is disclosed in Denvir an ozone generator 14; and a pump (air compressor) 16 operatively connected between the ozone generator and an ozone delivery device located within a food product containment vessel.

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It would have been obvious to one skilled in the art to provide the system of Kleinberger with the pump and ozone generator arrangement taught in Denvir, in order to sterilize food products presented in the holding case with pressurized ozone.

In regards to claims 9 and 12, there is presented no structural arrangement described in the claim. It is apparent in the prior art that if water is not supplied to the nozzle it would only deliver the ozonated air which is being supplied.

Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kleinberg et al. in view of Denvir et al. as applied to claims 1 and 5 above, and further in view of Karlson.

Karlson discloses the use of an air inlet filter 16, air drier 20 and muffler 21 all connected to an inlet of an ozone generator 23.

It would have been obvious to one skilled in the art to provide the device of Kleinberg, as modified by Denvir, with the filter, drier and muffler disclosed in Karlson, in order to enhance the air provided to the ozone generator.

Claims 1, 5, 9 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dettling et al. in view of Denvir et al.

Dettling discloses a refrigerated display case 10 comprising: a plurality of air atomizing nozzles 28 (col. 11, lines 65, 66) positioned proximate the display case and each including a water inlet 22 and an air inlet 36; an air compressor (inherent) connected between an air supply and the nozzles; and a water supply (col. 5, lines 62, 63) and control 26.

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Denvir teaches that it is known in the art to use ozone to sterilize contained food products. There is disclosed in Denvir an ozone generator 14; and a pump (air compressor) 16 operatively connected between the ozone generator and an ozone delivery device located within a food product containment vessel.

It would have been obvious to one skilled in the art to provide the system of Dettling with the pump and ozone generator arrangement taught in Denvir, in order to sterilize food products presented in the holding case with pressurized ozone.

In regards to claims 9 and 12, there is presented no structural arrangement described in the claim. It is apparent in the prior art that if water is not supplied to the nozzle it would only deliver the ozonated air which is being supplied.

Claims 2-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dettling et al. in view of Denvir et al. as applied to claims 1 and 5 above, and further in view of Karlson.

Karlson discloses the use of an air inlet filter 16, air drier 20 and muffler 21 all connected to an inlet of an ozone generator 23.

It would have been obvious to one skilled in the art to provide the device of Dettling, as modified by Denvir, with the filter, drier and muffler disclosed in Karlson, in order to enhance the air provided to the ozone generator.

Claims 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dettling et al. in view of Denvir et al. as applied to claims 1 and 6 above, and further in view of Kleinberger et al.

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Kleinberger discloses that it is known in the art to use a timer 96 with a water supply for providing pressurized water.

It would have been obvious to one skilled in the art to provide the water supply control of Dettling, as modified by Denvir, with the timer taught in Kleinberger, in order to provide a controlled supply of water.

Response to Arguments

Applicant's arguments filed 06 August 2007 have been fully considered but they are not persuasive. Applicant argues that Kleinberger fails to disclose an atomizing nozzle because there is no pressurized air used. The misting function of the Kleinberger nozzle 40 is what allows it to be defined as an atomizing nozzle. Atomizing is defined as a reduction of a liquid to a fine spray (mist). The presence of a pump 89 to supply liquid to the nozzles is what allows the liquid to be provided under pressure. There is nothing in the claims which requires pressurized air for an air atomizing nozzle. The claim calls for an air compressor, what is being equated by the examiner to a pump, for delivering pressurized ozone to a nozzle. The nozzle of Kleinberger receives a liquid and air and produces a mist (atomized liquid). It should be noted that element 124a is an air inlet in the body panel of the nozzle.

Applicant argues that there is no basis or suggestion to combine the systems of Kleinberger and Denvir. It is recognized that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. However, there is no requirement that a motivation to make the modification be expressly articulated.

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The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. In this case Denvir teaches the use of an ozone generator 14 and a pump (air compressor) 16 operatively connected between the ozone generator and an ozone delivery device located within a food product containment vessel. The ozone providing for sterilization of a food product.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

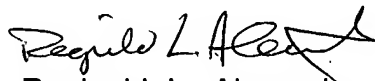
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Reginald L. Alexander whose telephone number is 571-272-1395. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

rla
05 September 2007


Reginald L. Alexander
Primary Examiner
Art Unit 1761